

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

## KENNY BORDERS,

**Defendant.**

**CASE NO. 8:06CR34**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 30). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 26 insofar as the PSR does not include a downward adjustment for a role reduction. This objection will be heard at the sentencing hearing. The Defendant bears the burden of proof by a preponderance of the evidence.

Also, the Defendant requests a downward departure or variance to accommodate his treatment for high blood pressure and sleep apnea. The Court acknowledges that it has the authority to depart downward and declines to exercise the opportunity in light of the reason provided. However, the Court will allow the Defendant to present the issue briefly in terms of a variance.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 30) will be heard at the sentencing hearing;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 25<sup>th</sup> day of September, 2006.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge